

FILED

FEB 25 2011

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION

In re ) Case No. 10-45625-A-7  
MONTE LUTHER HANEY, )  
Debtor. ) Docket Control No. None

## MEMORANDUM

On February 18, 2011, the chapter 7 debtor filed an ex parte motion asking the court to declare that a \$5,000 criminal "restitution fine" had been discharged in his chapter 7 case and order California prison authorities to cease collecting the restitution fine from his modest income. The debtor receives approximately \$100 per month for work within the prison. Fifty-five percent of this income is being taken to satisfy the outstanding restitution fine despite the fact that the debtor received a chapter 7 discharge.

This motion will be dismissed without prejudice.

The relief sought implicates 11 U.S.C. § 523(a)(7) which provides: "A discharge under section 727 . . . of this title does not discharge an individual debtor from any debt . . . to the

1 extent such debt is for a fine, penalty, or forfeiture payable to  
2 and for the benefit of a governmental unit, and is not  
3 compensation for actual pecuniary loss, other than a tax  
4 penalty - (A) relating to a tax of a kind not specified in  
5 paragraph.(1) of this subsection; or (B) imposed with respect to  
6 a transaction or event that occurred before three years before  
7 the date of the filing of the petition."

8 Section 523(a)(7) excepts from a chapter 7 discharge some  
9 criminal restitution awards made by state and federal courts.  
10 FDIC v. Soderling (In re Soderling), 998 F.2d 730 (9<sup>th</sup> Cir. 1993)  
11 (holding that both state and federal restitution orders  
12 potentially fall within the section 523(a)(7) exception to  
13 discharge).

14 The debtor acknowledges that the debt arises from a criminal  
15 restitution award. However, before ordering the prison  
16 authorities to halt collection of the restitution award, the  
17 court must first determine whether it is covered by the debtor's  
18 chapter 7 discharge. Is the restitution a fine, penalty, or  
19 forfeiture or is it compensation for some financial loss? If it  
20 is the former it is nondischargeable. Is the restitution owed to  
21 a governmental unit or to a victim of a crime? If it is the  
22 former it is nondischargeable.

23 To have the bankruptcy court answer these questions, the  
24 debtor must commence an adversary proceeding. See Fed. R. Bankr.  
25 P. 7001(6) and (9). That is, the debtor (or the prison  
26 authorities) must file a complaint, obtain the issuance of a  
27 summons, serve the summons and complaint, then prevail on the  
28 merits. Here, the debtor filed (but not served) a motion rather

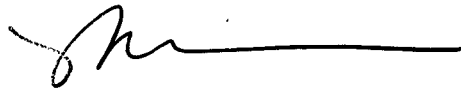
1 than a complaint.

2 Alternatively, because 11 U.S.C. § 523(c)(1) does not  
3 require the bankruptcy court to determine dischargeability under  
4 section 523(a)(7), the debtor (or the prison authorities) also  
5 may ask the court issuing the criminal restitution order to  
6 determine its dischargeability.

7 Accordingly, the motion will be dismissed without prejudice.  
8 A separate order will be entered.

9 Dated: *25 Feb 2011*

By the Court

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United States Bankruptcy Judge  
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